

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Part 1 of the)	WT Docket No. 97-82
Commission's Rules --)	
Competitive Bidding Procedures)	
)	
Allocation of Spectrum Below)	ET Docket No. 94-32
5 GHz Transferred from)	
Federal Government Use)	
)	
4660-4685 MHz)	

**ERRATUM TO THIRD REPORT AND ORDER
AND SECOND FURTHER NOTICE OF PROPOSED RULE MAKING**

Released: March 2, 1998

By the Chief, Wireless Telecommunications Bureau:

This Erratum makes minor corrections to the text of and final rules adopted in the *Third Report and Order* in the above-captioned proceeding, FCC 97-413, which was released on December 31, 1997. A summary of the *Third Report and Order*, including the final rules, was published in the Federal Register, 63 Fed. Reg. 2315 (January 15, 1998). The *Third Report and Order*, as well as this Erratum will be published in the FCC Record.

1. Page 13, n. 34 of the *Third Report and Order* is revised to correct an incorrect citation to read as follows: 47 U.S.C. § 309(j)(4)(D).

2. Page 13, n. 35 of the *Third Report and Order* is revised to correct an incorrect citation to read as follows: 47 U.S.C. §§ 309(j)(3)(B) and (j)(4)(D).

3. The first sentence of paragraph 37 of the *Third Report and Order* is revised to include an omitted word to read as follows:

On June 2, 1997, the Bureau, explaining that it had received several proposals from C block licensees regarding alternative financing arrangements and a petition for rule making regarding the issue of broadband PCS C block installment payments, issued the *Installment Payment Public Notice* seeking comment on these proposals and invited any "additional proposals for addressing the C and F block broadband PCS financing terms."⁸⁷

4. The last sentence of paragraph 45 of the *Third Report and Order* is revised to include an omitted word to read as follows:

Once a small business definition is adopted for a particular service, eligible businesses will benefit if they are able to refer to a schedule in our Part 1 rules to determine the level of bidding credit available to them.

5. Page 34, n. 138 of the *Third Report and Order* is revised to correct a typo to read as follows:

We note that, consistent with our broadband PCS rules, a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (*i.e.*, from sources whose gross revenues and total assets are not considered under § 24.709(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

⁸⁷ *Installment Payment Public Notice*. Several parties also filed petitions for reconsideration in the Commission's paging proceeding, in which they requested that the Commission reconsider its adoption of installment payment plans for small businesses. See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Petitions for Reconsideration*, filed by Paging Network, Inc. and Personal Communications Industry Association, April 11, 1997.

6. The first sentence and accompanying footnote of paragraph 78 of the *Third Report and Order* is revised to include an omitted word and to correct an incorrect citation to read as follows:

Finally, in a related proposal, PageNet states that the Commission should expressly prohibit "blind bidding" (*i.e.*, bidding in which auction participants do not know the identities or ownership information of the other bidders in the auction) in any pending and future auction because it (1) is unfair to auction participants; (2) encourages auction abuses; and (3) encourages speculation.²¹⁰

7. The first sentence following the example in paragraph 107 of the *Third Report and Order* is corrected to conform to Section 1.2110(f)(4) to read as follows:

As proposed in the *Notice*, under this system, licensees will not be required to submit a filing to take advantage of these provisions.²⁸⁸ During this 90-to-180-day period, the Commission or its designated collection agent will continue to pursue collection of past-due installments and fees.²⁸⁹ Also during this time, the licensee will have the opportunity to raise necessary capital, continue service and construction efforts, or seek a buyer for its license(s) that will resume payments. These late payment provisions will apply independently to all installment payments. Therefore, the late payment provisions and accompanying late fees will not affect the payment schedule for future payments. Thus, even if a licensee elects to take advantage of the late payment provisions, the licensee will still be responsible for remitting all future installment payments in a timely manner, unless the licensee elects to take advantage of the late payment provisions for any future installment payment. The following example illustrates how this system will operate:

ABC Corp. has a \$100,000 installment interest payment due on March 1. If ABC Corp. is able to make its payment on March 1, then it must remit \$100,000 to the Commission. If ABC Corp. makes its payment anytime from March 2 until May 30 (the end of the non-delinquency period), then ABC Corp. must remit \$105,000 to the Commission to be considered current on its March 1 installment payment. If ABC Corp. does not make its March 1 payment by May 30, then it must remit \$115,000 on or before August 28. If ABC Corp. does not remit the required \$115,000 by August 29 (the end of the 90-day

²¹⁰ PageNet Comments at 4-7.

²⁸⁸ We further note that the late fee is to be paid at the time the regular quarterly installment payment is made.

²⁸⁹ See Debt Collection Improvement Act, Pub. L. No. 104-134, § 3100(j)(1), 110 Stat. 1321 (1996), codified at 31 U.S.C. § 3711(a).

grace period), then it will be considered in default and its license will automatically cancel on August 30 without further action by the Commission.²⁹⁰

ABC Company's June 1 installment payment of \$100,000 remains due on June 1 regardless of the payment status of the March 1 payment. The late payment terms apply to June installment payment independently of the March payment. Thus, if ABC Company does not make its March 1 payment until June 1, the total amount due to the Commission on June 1 is \$215,000 which consists of the March payment, the March 5% non-delinquency late fee, the March 10% grace period late fee and the June payment. Assuming the licensee remits the March 1 payment and accompanying March late fees of \$115,000 to the Commission by August 29, then the total amount due to the Commission on September 1 will be \$215,000 which consists of the June installment payment of \$100,000, the June 5% non-delinquency late fee, the June 10% grace period late fee and September installment payment of \$100,000.

ABC Company may elect to make late payments and pay the accompanying late fees on the March and June payments. However, ABC Company must remit \$115,000 representing the required March payment and accompanying March late fees by August 29 (the end of March's 90-day grace period) or it will be considered in default and its license will automatically cancel on August 30 without further action by the Commission. Furthermore, ABC Company must remit an additional \$115,000 representing the required June payment and accompanying June late fees by November 29 (the end of June's 90-day grace period) or it will be considered in default and its license will automatically cancel on November 30 without further action by the Commission.

As we proposed in the *Notice*, the late fees we adopt will accrue on the next business day following the payment due date. We emphasize that at the close of non-delinquency or grace period, a licensee must submit the required late fee(s), all interest accrued during the non-delinquency period, and the appropriate scheduled payment with the first payment made following the conclusion of the non-delinquency period or grace period. Payments made at the close of any grace period will first be applied to satisfy any lender advances as required under each licensee's "Note and Security Agreement." Afterwards, payments will be applied in the following order: late charges, interest charges, principal payments. As part of our spectrum management responsibilities, we wish to ensure that spectrum is put to use as soon as possible. We also believe that licensees should be working to obtain the funds necessary to meet their payment obligations before they are due and, accordingly, that the non-delinquency and grace periods we adopt should be used only in extraordinary circumstances. Thus, as we emphasized in the *Notice*, a licensee who fails to make payment within 180 days sufficient to pay the late fees, interest, and principal, will be deemed to have failed to make full payment on

²⁹⁰ See 47 C.F.R. § 1.2110(e)(4)(iii).

its obligation and will be subject to license cancellation pursuant to Section 1.2104(g)(2) of the Commission's rules.

8. The last sentence of paragraph 122 of the *Third Report and Order* is corrected to conform to Section 1.2110(f)(4)(iv) to read as follows:

We recognize that some commenters strongly advocate a policy of cross defaults in this context. These commenters suggest that such a policy (1) prevents speculation during the auction and cherry-picking (*e.g.*, selectively defaulting on some licenses while keeping others) after the auction concludes,³³⁶ (2) encourages auction participants to find private market solutions to financial shortfalls,³³⁷ and (3) is consistent with commercial lending policies.³³⁸ We believe, however, that the default provisions contained in Section 1.2104(g)(2) serve as an adequate incentive to discourage speculation and encourage licensees to pursue non-default solutions to financial difficulties. We also emphasize that our decision on this matter only addresses default in the context of installment payments, and does not affect our policy with regard to defaults on down payments.³³⁹ In addition, by making licensees who default on an installment payment subject to the default payment set forth in Section 1.2104(g)(2), we create an additional deterrent to licensees considering default as a solution to financing shortfalls. We believe that this policy will promote the goals of Section 309(j) by not punishing otherwise successful licensees for failures in one market, and will strike an appropriate balance between our conflicting roles as both "lender" and "regulator."³⁴⁰ Accordingly, upon default on an installment payment, a license will automatically cancel without further action by the Commission and the Commission will initiate debt collection procedures against the licensee and accountable affiliates.³⁴¹

9. Section 1.2107(c) of the Commission's rules is corrected by adding a cross reference to

³³⁶ CRI Comments at 15-16.

³³⁷ PCIA Comments at 7; AirTouch Comments at 9.

³³⁸ AirTouch Comments at 9.

³³⁹ See Section III.D.b, *supra*. See also BDPCS, Inc. Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum Opinion and Order*, 12 FCC Rcd 3230 (1997).

³⁴⁰ See *Report to Congress* at 39.

³⁴¹ 47 C.F.R. §§ 1.2104(g), 1.2110(e)(4)(iii). See also 31 U.S.C. Chapter 37; 4 C.F.R. Parts 101-105; 47 C.F.R. Part 1, Subpart O.

Section 1.2112 of the Commission's rules to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Specific procedures for filing applications will be set out by Public Notice. Ownership disclosure requirements are set forth in § 1.2112. Beginning January 1, 1999, all long-form applications must be filed electronically. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in § 1.2104.

10. Section 1.2110(f)(2) of the Commissions rules is corrected by adding additional language to conform to the text of the *Third Report and Order* to read as follows:

§ 1.2110 Designated entities.

* * * * *

(f)

* * * * *

(2) Within ten (10) days of the conditional grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. If a winning bidder eligible for installment payments fails to submit this additional ten (10) percent of its high bid by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due. When a winning bidder eligible for installment payments fails to submit this additional ten (10) percent of its winning bid, plus the late fee, by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of second down payments and any applicable late fees.

* * * * *

11. Section 24.712 of the Commissions rules is corrected to conform to Federal Register requirements by deleting paragraph (d) and adding paragraph (c) to read as follows:

§ Bidding credits for licenses for frequency Blocks C.

* * * * *

(c) Unjust Enrichment. See § 1.2111 of this chapter.

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau